

FEB 01 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN LESTER,

Defendant - Appellant.

No. 05-30187

D.C. No. CR-02-06002-FDB

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Franklin D. Burgess, District Judge, Presiding

Submitted January 27, 2006**
Seattle, Washington

Before: RAWLINSON and CLIFTON, Circuit Judges, and MARSHALL,***
Senior District Judge.

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

**This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

***The Honorable Consuelo Marshall, Senior United States District Judge for the Central District of California, sitting by designation.

Relying on *United States v. Merino-Balderrama*, 146 F.3d 758, 762-63 (9th Cir. 1998), John Lester argues that the district court abused its discretion by admitting into evidence twenty photographs of child pornography, despite his offer to stipulate that the photographs depicted child pornography. However, unlike in *Merino-Balderrama*, in this case there was evidence that Lester looked at the images of child pornography that he was charged with possessing; no satisfactory evidentiary alternative for the images existed; the images had probative value in multiple ways; and the district court took precautions to prevent unfair prejudice. Under these circumstances, the district court did not abuse its discretion. *See United States v. Hay*, 231 F.3d 630, 638-39 (9th Cir. 2000).

AFFIRMED.